Office of the
Merit Commissioner

Upholding Fair Hiring in the BC Public Service

2016–2017
Annual Report

Office of the
Merit Commissioner
Upholding Fair Hiring in the BC Public Service

The Honourable Linda Reid
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings, Room 207
Victoria, British Columbia V8V 1X4

Dear Madam Speaker:

It is my honour to present the 2016–2017 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Fiona Spencer

Fiona Spencer
Merit Commissioner

Victoria, British Columbia
May 2017

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Message from the Merit Commissioner

I am pleased to present this Annual Report on behalf of the Office of the Merit Commissioner. Despite transition and change in our small team, we concluded a full audit of 321 appointments to and from within the BC Public Service, and conducted 11 reviews of staffing decisions, as requested by employees. The results of this work are summarized in this report, and explained in more detail on our website.

A look at the results of our most recent audit might leave the impression that the state of merit-based hiring in the BC Public Service is at risk. But I am not of that view. Although we found issues and flaws with more audited appointments than we have in the past, most problems we found did not necessarily have a negative impact on the outcome of the selection process. In other words, for the majority of these findings, there was no evidence that an incorrect appointment was made.

Issues we identify can often be the result of lack of understanding, poor attention to detail, or just honest error. Regardless of the cause, these and other issues are important as they do have the potential to result in a different outcome of a selection process. There is also a possible decrease in employee confidence in the fairness of hiring, especially when they may encounter hiring decisions where they see or perceive such things as a lack of transparency, inconsistencies, or errors and omissions in postings or communications. The matters we identify in our audits are expected to be improved through training, communication, or changes to procedures and practices, so that hiring processes are not only conducted properly, but are seen to be conducted properly.

Both our unique perspective on hiring, as well as our findings—accepted by organization heads and the Deputy Minister, BC Public Service Agency—add value to the ongoing process of ensuring that merit remains the cornerstone of hiring in the BC Public Service.

In the coming year, my mandate may be expanded to include oversight of administrative processes related to dismissals from the public service. The report by the

BC Ombudsperson on the 2012 Ministry of Health employment terminations entitled "Misfire", released April 6, 2017, contains a recommendation proposing an addition to the mandate of the Merit Commissioner. This recommendation, which has been accepted by government, is that by March 31, 2018, changes to the *Public Service Act* be introduced for consideration that would provide me with the authority to conduct reviews of all public service dismissals for cause and to publicly report the results.

Over the coming months, I will be providing input on what I consider such amendments to the *Act* should entail. I will also be developing, for discussion with stakeholders, other proposals for amendments that would, in my view, enhance fair and accountable merit-based hiring practices in the BC Public Service. With these initiatives underway, we look forward to the challenges the coming year may present.

Fiona Spencer

Fiona Spencer, Merit Commissioner

The Merit Principle

The *Public Service Act* states that all appointments to and from within the BC Public Service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan.

Vision

A professional and non-partisan public service that is hired and promoted on the principle of merit.

Mission

To serve the people of British Columbia through their elected representatives of the Legislative Assembly, by monitoring public service appointments to ensure the application of the merit principle in hiring and promotions in the BC Public Service.

Role

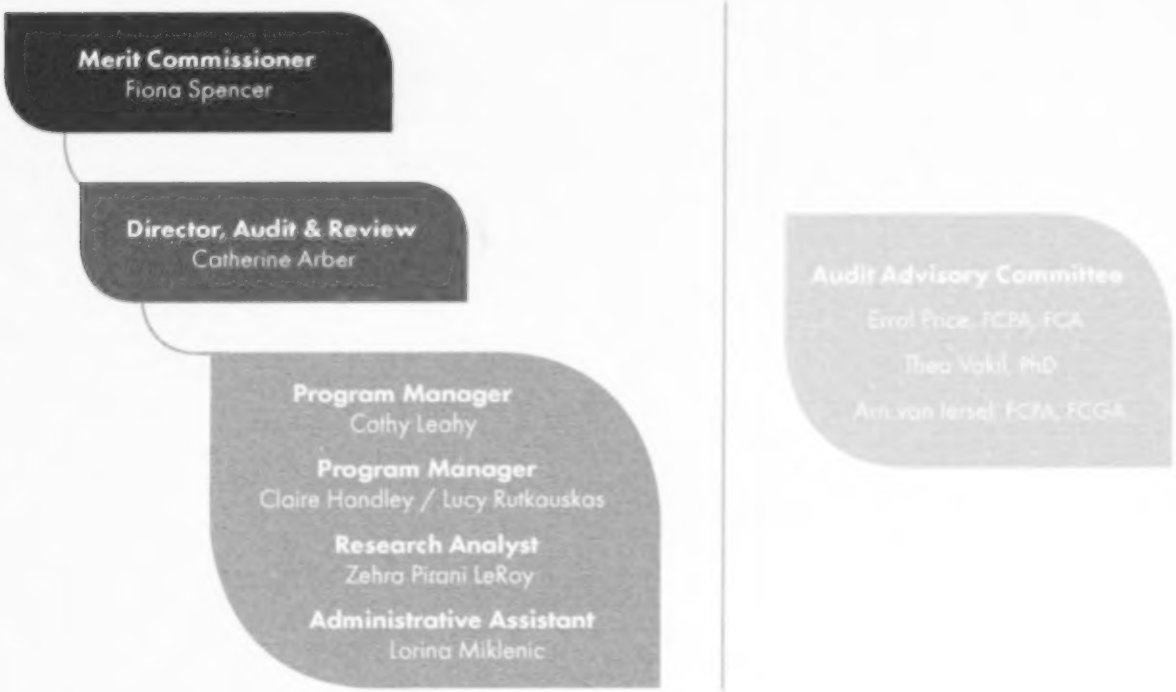
The Merit Commissioner provides independent oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Office of the Merit Commissioner achieves this oversight by randomly auditing staffing appointments, conducting special audits and studies, and reviewing appointment decisions upon request by employee applicants. The Office of the Merit Commissioner also informs hiring managers, employees and the public of our findings through reports and studies. As well, we deliver presentations to increase awareness about the value of merit-based hiring practices. The Merit Commissioner reports annually to the Legislative Assembly on the application of the merit principle in the BC Public Service.

The Office of the Merit Commissioner

The Merit Commissioner is appointed by the Legislative Assembly on a part-time basis for a three-year term. The Office of the Merit Commissioner (the Office) consists of a small team of core staff supplemented by contract auditors.

Our Audit Advisory Committee provides a forum for discussion, consultation, advice, and guidance with respect to our audit program and process. Members are selected for their professional qualifications, relevant knowledge about the public service, and expertise related to performance audits. The Committee meets periodically with the Merit Commissioner and her staff to provide audit advice, contribute to audit planning, and examine issues of interest.

The Office is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others, and we make certain all those who contact the Office are treated with respect. We are passionate about our work and understand that a vital part of being independent is to have the courage to deliver facts and recommendations about where improvements are needed, as well as to report on progress and accomplishments.



Stakeholders

The Office provides oversight of provincial government organizations that have employees appointed under the *Public Service Act* (the *Act*), including: ministries, tribunals, agencies, boards, commissions, independent offices of the Legislature, and the offices of the Courts. The Office broadly shares responsibility for upholding merit-based hiring and promotions in the BC Public Service with key stakeholders as illustrated below.

Fair hiring practices are of significant interest to employees and are key to their engagement and retention. Employees can have a positive impact on hiring practices when they raise issues and concerns to the Office, as that helps us gauge the state of merit-based hiring within the BC Public Service, and contributes to informing the Office's work related to future audits and special studies.

Stakeholder Responsibilities for Merit-Based Hiring

Deputy Minister, BC Public Service Agency

- Sets staffing policy and the accountability framework for human resource management with the Deputy Ministers' Council
- Provides staffing support and training to client groups
- Delegates responsibilities for staffing activities to deputy ministers and heads of organizations
- Authorizes direct appointments
- Receives and takes action as appropriate on the Merit Commissioner's audit and study findings

Deputy Ministers and Organization Heads

- As a Council, carry out the corporate human resource plan
- Create and lead a culture supportive of merit-based hiring
- Sub-delegate staffing activities to line managers and supervisors
- Hold hiring managers accountable for hiring decisions
- Respond to requests at the second step in the staffing review process
- Receive and take action as appropriate on the Merit Commissioner's audit and staffing review decisions

Hiring Managers

- Acquire and maintain the knowledge and skills required to conduct merit-based hiring processes
- Make fair and unbiased hiring decisions
- Respond to requests at the first step in the staffing review process by providing feedback

The bargaining units that represent most BC Public Service employees—BC Government and Service Employees' Union (BCGEU), the Professional Employees Association (PEA), and the nurses' unions—as well as the BC Excluded Employees' Association, have long records of encouraging and supporting merit-based hiring in the public service.

Appointments on Merit

Section 8(1) of the *Act* requires that, other than in some defined exceptions, appointments to and from within the public service must: (a) be based on the principle of merit, and (b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.

Our Work

The Office has two main lines of business: conducting merit performance audits and, upon request, reviewing individual staffing decisions. The following sections include synopses of work completed during 2016–2017 and work in progress. Detailed reports related to the work we completed in 2016–2017 and past years can be found at **www.meritcomm.bc.ca**.

Merit Performance Audits

Overview

The Office monitors the application of the principle of merit in the BC Public Service by conducting random audits of permanent appointments and temporary appointments greater than seven months. Any organization to which section 8 of the *Act* applies may be audited by the Office.

We conduct audits in accordance with generally accepted professional audit standards and methodology, work with independent statisticians to ensure rigour and objectivity in obtaining random and representative samples, and incorporate quality assurance reviews into the audit process.

In accordance with section 5.1(a) of the *Act*, the purpose of a merit performance audit is to determine whether:

(i) the recruitment and selection processes were properly applied to result in appointments based on merit, and

(ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed.

Recruitment and Selection Process

In accordance with an established audit program, we determine whether the design and conduct of a hiring process led to a merit-based appointment. As part of this determination, we consider the application of relevant legislation, policy, and provisions of collective agreements, such as whether the factors of merit were appropriately assessed, and whether the hiring decisions were properly communicated to employee applicants. The overall approach (i.e., process) employed to recruit and select applicants is examined, as well as specific aspects of the process, which we categorize as assessment (e.g., short-listing, testing, and interviewing), past work performance, years of continuous service and notification. We also consider whether there was sufficient supporting documentation (i.e., evidence) of the actions taken and decisions made. The detailed audit program can be viewed at **www.meritcomm.bc.ca**.

For each appointment audited, one of the following findings is described.

Factors of Merit

Section 8(2) of the *Act* sets out the matters to be considered in determining merit, which must include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service.

Recruitment and Selection Process Findings

Merit	The appointment was the result of a process designed to assess the factors of merit based on the duties to be performed. The process was applied in an objective and transparent manner, and assessment decisions were fair and reasonable.
Merit with exception	Overall, the appointment was the result of a merit-based process; however, one or more issues were found with the design or application of the process, none of which had an identifiable negative impact on the outcome.
Merit not applied	The appointment was not the result of a merit-based process. A critical flaw or error was found in the design or application of the process, which resulted in an identifiable negative impact on the outcome.
Did not demonstrate	There was insufficient evidence provided to demonstrate that the design or application of the process was based on merit.

Individual Appointed

We also determine, in accordance with the established audit program and based on the evidence provided, whether the individual appointed possessed the education and experience specified as required for the position and met the minimum criteria established for the other factors assessed during the process. With respect to the individual whose appointment is being audited, this determination leads to one of the individual appointment findings below.

Audit findings for each appointment are reported to the respective deputy minister or organization head. A report of overall results is provided to the Deputy Minister of the BC Public Service Agency (Agency Head) and presented to the Legislative Assembly before being posted on our website. The audit findings and report acknowledge and support good hiring practices throughout the BC Public Service and also hold managers accountable for hiring decisions. The merit performance audit is a means of bringing issues and opportunities for improvement to the attention of the Agency Head, deputy ministers, and organization heads.

Individual Appointment Findings

Qualified	The individual, when appointed, possessed the qualifications specified as required for the position.
Not qualified	The individual, when appointed, did not possess the qualifications specified as required for the position.
Did not demonstrate	There was insufficient evidence provided to demonstrate that the individual, when appointed, possessed the qualifications specified as required for the position.

Audit Determinations

Each audit results in two determinations: whether the recruitment and selection process was based on merit and whether the individual appointed was qualified.

Work Completed

2015–2016 Merit Performance Audit

The appointments audited in the 2015–2016 Merit Performance Audit were randomly selected from a population of 5,474 appointments made between April 1, 2015, and March 31, 2016. To ensure these appointments were representative of the overall appointment population, the data was stratified by appointment type (permanent appointments and temporary appointments exceeding seven months). An overall sampling rate of six per cent ensured that audit results would be generalizable to the same types of appointments across the BC Public Service. A total of 329 appointments were selected, of which eight were determined to be outside the scope of the audit and removed from consideration. The Office conducted audits of the remaining 321 hiring processes.

2015–2016 Merit Performance Audit Timeline

2015

April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan
Q1 Appointments			Q2 Appointments			Q3 Appointments			Q4 Ap
			Q1 Sample drawn			Q2 Sample drawn			Q3 Sample drawn
			Competition files received			Competition files received			Competition files r
			Auditing						
			Audits conducted						
			Audits reviewed for quality and consistency						

Where preliminary findings of "merit not applied" were made, we provided the responsible deputy minister or organization head with the draft results and the opportunity to provide additional or clarifying information. They also received a final report for each appointment audited within their organization. At the conclusion of the audit, we completed a comprehensive analysis of the overall findings. Our findings and analysis were reported to the Legislative Assembly in November 2016 and were published on our website. A graphic representation of the timeline for the 2015–2016 Merit Performance Audit is shown below.

Individual Appointed

The 2015–2016 Merit Performance Audit found that two individuals, when appointed, did not possess the qualifications specified as required for the respective positions. All of the other 319 individuals, when appointed, did possess the specified qualifications. In addition, there was no evidence that any of the appointments audited were the result of patronage.

Recruitment and Selection Process

The audit found that 42 per cent of appointments audited were the result of a merit-based recruitment and selection process with no issues or flaws, and 51 per cent of appointments audited were found to be in the "merit with exception" category. The "merit with exception" determination indicates one or more issues with the recruitment and selection process, ranging from minor to serious, none of which had an identifiable negative impact on the outcome. The "merit not applied" findings show that flaws in the process affected the outcome in six per cent of the audited appointments. Less than one per cent of the audited appointments resulted in a "did not demonstrate" finding which indicates that there was insufficient evidence to demonstrate that the design or application of the process was based on merit. Based on the extrapolation calculations supported by BC Stats, this means that, of all the appointments made throughout the BC Public Service over the 2015–2016 fiscal year, an estimated 2,257 were merit-based, 2,754 had issues but were still considered to be merit-based, and 315 were deemed to have been the result of a flawed process (i.e., they were not merit-based).

The issues and flaws identified with the design and application of the recruitment and selection process were grouped into the following categories: process, assessment, past work performance, years of continuous service, notification, and documentation.

Categories of Issues and Flaws

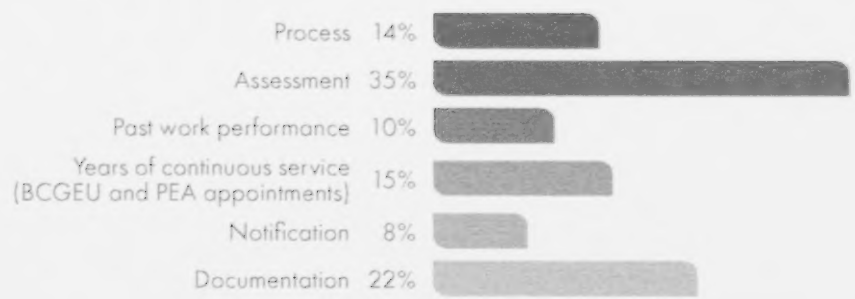
Process	Was the overall approach to recruit and select applicants fair, reasonable and transparent, given the job and its requirements?
Assessment	Were applicants consistently and appropriately evaluated in accordance with the following factors of merit: education, skills, knowledge and experience?
Past work performance	Was this factor properly assessed, including at least one reference from a supervisor or equivalent?
Years of continuous service	Was this factor properly considered, and assessed where applicable?
Notification	Were employee applicants notified of the final outcome of the hiring process?
Documentation	Was there sufficient documentation to show that process, actions and decisions were transparent, consistent, relevant and reasonable?

While many appointments had more than one issue or flaw identified, there was only one overall merit performance audit finding reported for each audit, as illustrated below. The number of identified issues and flaws that led to "merit with exception" or "merit not applied" findings are also illustrated below, as the percentage of appointments with a flaw or issue by category of finding.

The number of "merit with exception" findings has fluctuated over the previous merit performance audits. The frequency of this type of finding is the highest to date, and it is also the first time that the rate of "merit with exception" findings has exceeded the rate of "merit" findings. Correspondingly, there was a decrease in both the percentage of "merit" and "merit not applied" findings. The most concerning issues and flaws identified were related to the areas of assessment and process. These types of issues and flaws will continue to be closely monitored in subsequent audits.

2015–2016 Overall Merit Performance Audit Findings

Percentage of Appointments Audited with a Flaw or Issue by Category of Finding



2015–2016 Merit Performance Audit Recommendations

Based on the analysis of the 2015–2016 Merit Performance Audit findings, the Merit Commissioner made a number of recommendations to deputy ministers and organization heads to strengthen merit-based hiring, recognizing that assistance by the BC Public Service Agency may be necessary to support implementation. The recommendations, which follow, highlight areas for improvement related to assessment, years of continuous service, and documentation.

- Ensure that the foundational pieces of the hiring process are in place prior to posting, including minimum qualifications that are accurately described and advertised, and that these are not reduced, changed, or inconsistently applied during short-listing.
- Ensure that standardized templates and tools are adapted to include sufficient job-specific assessment standards and criteria.
- Ensure that the calculation of years of continuous service is based on accurate data.
- Continue to improve documentation at all stages, including tracking of applicants, in large competitions.

Work Underway

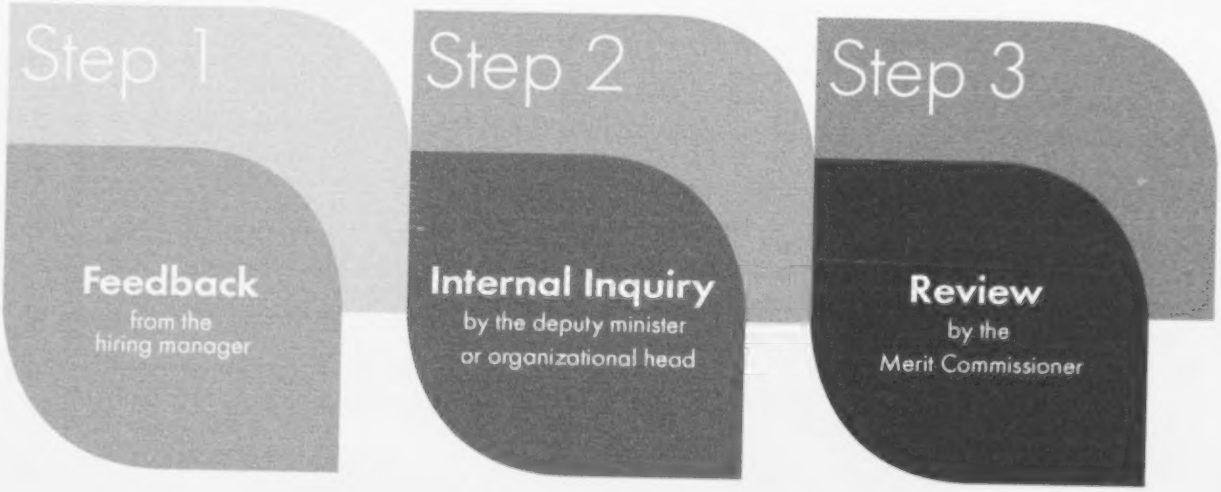
2016–2017 Merit Performance Audit

The 2016–2017 Merit Performance Audit of appointments made from April 1, 2016, through March 31, 2017, is currently underway. This audit will introduce several changes to the findings related to the recruitment and selection process. These changes have been made to focus more on those matters related to the hiring decision and less on the administrative aspects associated with those actions, as well as to bring clarity to audit findings and their related implications. Random samples of appointments were drawn for each quarter, and in April 2017, audit reports for 134 appointments from the first two quarters were provided to deputy ministers and organization heads. In the fall of 2017, the audit reports for appointments identified in the last two quarters of the fiscal year are expected to be distributed. The final comprehensive report, including the analysis and summary of the overall audit results, is targeted for publication in November 2017.

Staffing Reviews

Overview

The *Act* provides employee applicants who are unsuccessful in competitions for permanent appointments or temporary appointments exceeding seven months, with the right to request a review of the appointment decision. There is a three-step staffing review process, which an employee may initiate when notified of a competition outcome.



The third step in the process, a review by the Merit Commissioner, is available to employees who are applicants for bargaining unit positions. Should an employee proceed to this step, the Merit Commissioner conducts an independent review and determines whether the aspects of the selection process related to the employee's grounds comply with the requirements of section 8(1) of the *Act*. If the appointment is determined to comply, the Merit Commissioner upholds the appointment decision; if not, she directs a reconsideration of the appointment decision. The Merit Commissioner's decision is final and binding. In general, decisions are issued within 30 days following receipt of the documents necessary to conduct the review.

Work Completed

2015–2016 Report on Staffing Reviews

An analysis of the seven eligible staffing reviews conducted during 2015–2016 was completed in the spring of 2016, and a final report was published on our website in July 2016. Given the small number of reviews, broad conclusions were not drawn; however, the report discussed the common grounds put forward by the employees who requested this final level of examination of appointment decisions. These grounds, representative of employee concerns, were similar to those identified in previous years and included: improper consideration or weight given to a factor of merit (typically experience), unfair assessment of interview or test responses, and inconsistent interview administration practices. There was also one unique ground from an eligible staffing review involving the appropriateness of using a professional designation as a mandatory qualification for short-listing.

In all seven cases, the Merit Commissioner dismissed the review and upheld the original appointment decision. The eighth request, while ineligible for a review, raised an important issue. It brought to the attention of the Office the questionable practice of provisionally placing employees on eligibility lists prior to completion of the assessment process. This practice is of concern as it may, in effect, deprive employee candidates of their right to proper notification and recourse.

2016–2017 Staffing Reviews

In 2016–2017, the Merit Commissioner received 14 requests for review of proposed appointments within seven different ministries or organizations. Most of these proposed appointments resulted from in-service competitions for permanent appointments. Three of the review requests were ineligible because no appointment was made, prescribed timelines were not met, or an internal inquiry was not conducted. Reviews of the other 11 appointments were undertaken.

The conduct of each review included a detailed analysis of the documented evidence contained within the competition file, supplemented by information obtained through discussions with the employee requesting the review, the hiring manager, and where necessary, other relevant individuals such as hiring panel members. Each review was guided by the requirements of legislation, collective agreement provisions, and hiring policies. Consideration was given as to whether the hiring process was fair and transparent, the assessment conducted was relevant to the job, and the decisions made were reasonable.

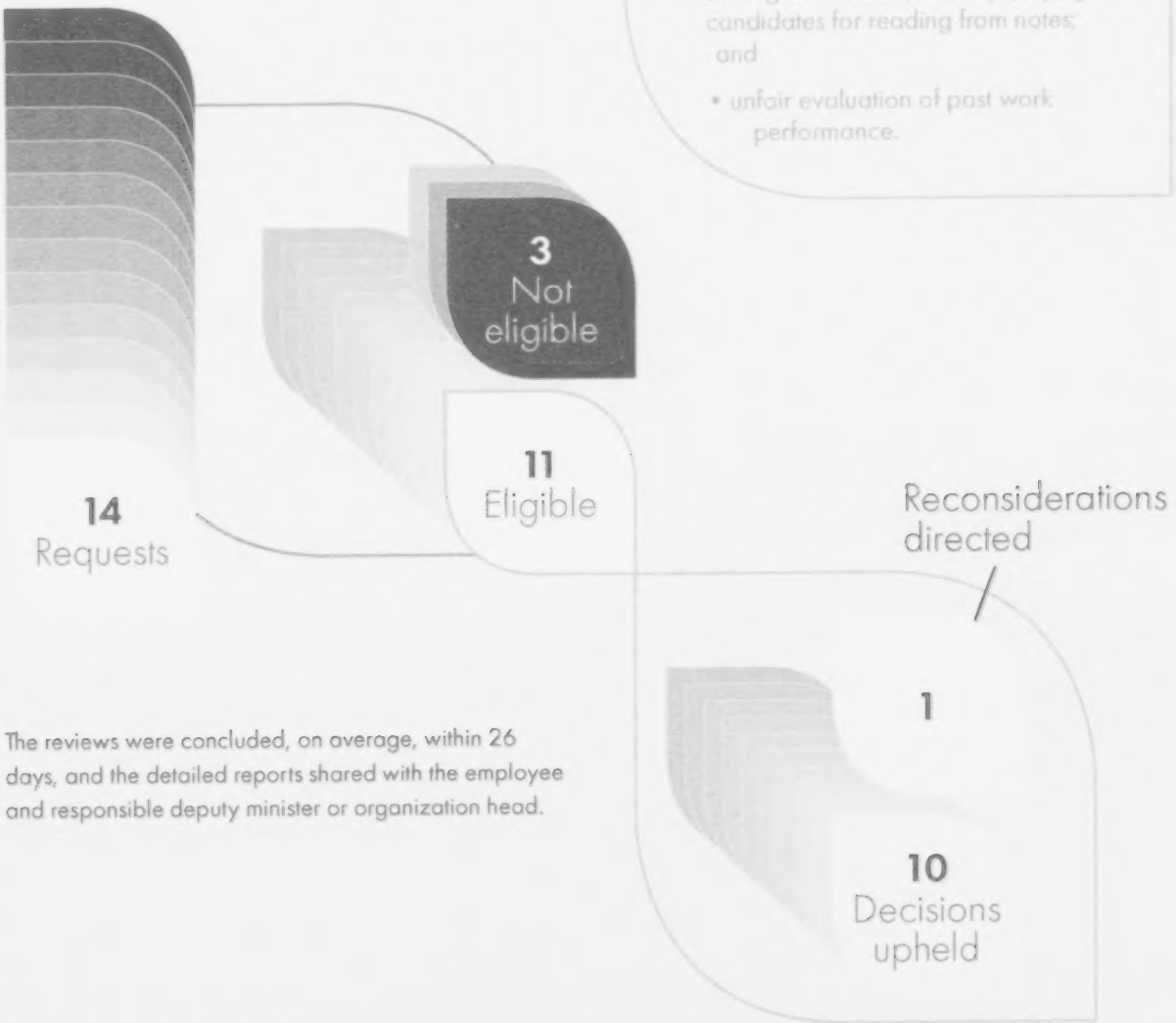
There are notification and feedback issues found in conducting audits and reviews which have serious implications for the fairness of the staffing review process. Instances have been identified where individuals were not properly notified of the final hiring decision and their right of recourse. There have also been times where applicants were provided insufficient information to understand the competition process or their performance within it. Without adequate notification and feedback, individuals are obstructed from making an informed decision about whether to exercise their right to request a staffing review.

The Merit Commissioner issued 11 decisions in 2016–2017. Each decision was rendered after thoughtful consideration of the employee's concerns and a thorough examination of the hiring process. In 10 of these cases, the appointment was found to be merit-based. There was one case where the Merit Commissioner found that the appointment was not merit-based and directed the responsible deputy minister to reconsider the appointment.

Grounds for Review 2016–2017

Common grounds for review in the fiscal year included:

- insufficient consideration or weight given to training and experience;
- incorrect marking of test or interview responses;
- unreasonable interview administration, such as format or timing varying among candidates, or disqualifying candidates for reading from notes; and
- unfair evaluation of past work performance.



The reviews were concluded, on average, within 26 days, and the detailed reports shared with the employee and responsible deputy minister or organization head.

Work Underway

2016–2017 Report on Staffing Reviews

An analysis of the staffing reviews conducted in 2016–2017 is being undertaken, and a final report will be published in the summer of 2017. Recurring themes in employees' grounds provide the Office with insight into areas where future audits or studies of specific aspects of the hiring process may be warranted.

Merit-based hiring is an important part of:

- building a qualified and professional public service;
- sustaining an engaged and productive workforce;
- demonstrating credible leadership; and
- maintaining public trust.

Budget

The Office's operating budget and expenditures for the 2016–2017 fiscal year are shown below by expenditure type.

In November 2016, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to review results of the work of the Office over the previous year, establish priorities for the year ahead, and review budget requirements for the next three fiscal years. The Committee acknowledged the work of the Office and endorsed the Service Plan as it was presented. Subsequently, the Office was allocated a budget of $1,125,000 for fiscal 2017–2018. Details of this budget allocation are also shown below.

Budget and Expenditures

	Approved Budget 2016–2017	Actual Expenditures 2016–2017	Approved Budget 2017–2018
Salaries & Benefits	$ 636,000	$ 619,334	$ 655,000
Travel Expenses	$ 15,000	$ 18,329	$ 17,000
Operating Expenses	$ 303,000	$ 296,477	$ 317,000
Professional Services	$ 100,000	$ 113,740	$ 136,000
Total	$ 1,054,000	$ 1,047,880	$ 1,125,000

Appendix A

Organizations Subject to Oversight by the Merit Commissioner

(as of March 31, 2017)

Ministries

Aboriginal Relations and Reconciliation
Advanced Education
Agriculture
Children and Family Development
Community, Sport and Cultural Development
Education
Energy and Mines
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
International Trade
Jobs, Tourism and Skills Training
Justice
Natural Gas Development
Public Safety and Solicitor General
Small Business and Red Tape Reduction
Social Development and Social Innovation
Technology, Innovation and Citizens' Services
Transportation and Infrastructure

Independent Offices

Auditor General
Elections BC
Information and Privacy Commissioner
Merit Commissioner
Ombudsperson
Police Complaint Commissioner
Representative for Children and Youth

Courts of British Columbia

Provincial Court of BC
Supreme Court of BC
BC Court of Appeal

Other Public Sector Organizations

Agricultural Land Commission
Auditor General for Local Government
BC Human Rights Tribunal
BC Pension Corporation
BC Public Service Agency
BC Review Board
Community Care and Assisted Living Appeal Board
Destination BC
Employment and Assistance Appeal Tribunal
Environmental Appeal Board
Financial Institutions Commission
Financial Services Tribunal
Forest Appeals Commission
Forest Practices Board
Health Professions Review Board
Hospital Appeal Board
Independent Investigations Office
Islands Trust
Office of the Premier
Oil and Gas Appeal Tribunal
Property Assessment Appeal Board
Public Guardian and Trustee
Public Sector Employers' Council Secretariat
Royal BC Museum
Safety Standards Appeal Board
Surface Rights Board

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